

## DEPARTMENT OF FINANCE BILL ANALYSIS

**AMENDMENT DATE:** May 6, 2008  
**POSITION:** Oppose

**BILL NUMBER:** SB 1301  
**AUTHOR:** G. Cedillo  
**RELATED BILLS:** AB 2083 (Nunez)

### **BILL SUMMARY:** Student Financial Aid: Institutional Aid Eligibility

This bill would require the Trustees of the California State University (CSU) and the Board of Governors of the California Community Colleges (CCC), and request the Regents of the University of California (UC), to establish procedures and forms to enable any student who is exempt from paying nonresident tuition under the provisions of AB 540 (Chapter 814, Statutes of 2001), including an undocumented individual, to be eligible for institutional financial aid. The bill defines institutional financial aid as financial assistance offered by a public higher education institution, including grants, scholarships, work-study, and loan programs, but excluding CCC Board of Governors fee waivers. Current CSU policy requires residency status for a student to receive institutional financial aid, whereas UC provides institutional aid to *documented* students who receive the nonresident tuition waiver under AB 540.

### **FISCAL SUMMARY**

Based on the 2006-07 rate of enrollment of AB 540 eligible students at UC, UC estimates a cost of \$650,000 in 2008-09 and \$1.3 million in 2009-10 to provide institutional aid to undocumented students who are exempt from paying nonresident tuition under AB 540. These estimates assume that the institutional aid awards would begin in January 2009, thus providing half-year benefits to students enrolled in the 2008-09 academic year. Similarly, the Department of Finance (Finance) estimates that this bill would result in costs of \$3.5 million in 2008-09 and \$7 million in 2009-10 to provide institutional aid to AB 540 eligible CSU students. These estimates are based upon the number of AB 540 students who attend UC (including documented nonresident students) as a percentage of total undergraduate enrollment, because data on the number of these students who attend CSU is not available. These numbers reflect a conservative estimate because this bill would create incentives for more AB 540 students to enroll.

In 2006-07, according to the Chancellor's Office, the CCCs awarded approximately \$20 million in institutional financial aid from Proposition 98 General Fund monies to currently eligible students (above and beyond the \$248 million allocated for Board of Governors fee waivers). This bill would create cost pressure likely in the millions of dollars to provide additional financial assistance (in the form of grants and loans) to students who are exempt from paying nonresident tuition under AB 540.

In addition, the bill may require minor, absorbable local costs for community college districts to revise forms if necessary to reflect procedures promulgated by regulations of the Chancellor, pursuant to authority contained in this bill. To the extent that more substantive changes would be necessary, the costs would likely be a reimbursable state mandate.

### **SUMMARY OF CHANGES**

Amendments to this bill since our analysis of the February 20, 2008 version include one significant amendment, which does not change our position:

- The original version of this bill would have included CCC Board of Governors fee waivers as part of the institutional financial aid that the bill would have provided to CCC students who are exempt from

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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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paying nonresident tuition under AB 540. The amendment would specify that institutional financial aid would not include these fee waivers.

## **COMMENTS**

Finance is opposed to this bill for the following reasons:

- In 2006 and 2007, the Governor vetoed similar legislation (SB 160, Cedillo and SB 1, Cedillo) on the basis of the state's limited ability to finance additional higher educational aid benefits to undocumented students, and a concern that it would have penalized students who reside in the state legally by reducing the financial aid they rely upon to attend college.
- The bill's provision allowing UC, CSU, and the CCCs to provide institutional aid to these students could limit the financial aid awards provided to other financially needy students. This would drive potentially significant cost pressures on the state's General Fund to provide additional institutional aid funds to these segments or could drive pressure for higher fees at UC and CSU.
- This bill is premature, given that a lawsuit was filed in December, 2005 that argues that AB 540 violates federal law to the extent that it provides a benefit for non-U.S. citizens that is not also provided to U.S. citizens. This lawsuit is currently being appealed in the Third Appellate District of the State of California.

## **ANALYSIS**

### **A. Programmatic Analysis**

This bill would make any student, including an undocumented individual, who is exempt from paying nonresident tuition under current law eligible to receive institutional financial aid at UC, CSU and the CCCs. Specifically, the bill would request the UC Regents, and request the CSU Trustees and the Board of Governors of the CCCs, to establish procedures and forms that enable these students to be eligible to receive institutional financial aid awards.

Pursuant to AB 540, a student who attends high school in California for at least three years and graduates from a California high school or its equivalent is exempt from paying nonresident tuition at UC, CSU, and the CCCs. Students who are eligible for this exemption include undocumented students and those students who are U.S. citizens but cannot establish residency. If the student is an alien without lawful immigration status (i.e. undocumented), he or she must have filed an affidavit stating that the student has filed an application to legalize their immigration status or will file such an application as soon as they are eligible to do so. Both undergraduate and graduate students qualify for the exemption.

A lawsuit was filed in 2005 that argues that AB 540 violates federal law (U.S.C. 8 1623) to the extent that it provides a postsecondary education benefit for non-U.S. citizens that is not also provided to U.S. citizens. Current law, enacted through AB 1543 (Chapter 19, Statutes of 2002), states that UC, CSU, and the CCCs are immune from the imposition of any award of money damages, tuition refund or waiver, or other retroactive relief if a state court determines that the exemption of nonresident tuition is unlawful.

This bill would state legislative findings and declarations that the bill's provision for institutional financial aid awards is a state law within the meaning of U.S.C. 8 1621(d). This appears to be an attempt to take advantage of a federal law that allows a state to make an undocumented immigrant eligible for a public benefit.

**BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)****Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

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**B. Fiscal Analysis**

UC stated that 1,639 students qualified for resident tuition under AB 540 in 2006-07, and estimated that 455 of these students were undocumented. UC estimates a cost of \$1.3 million to provide institutional aid to these students, based on an average award amount of \$2,860 per student. (Nonresident documented citizens currently qualify for institutional aid at UC.) Since the bill would not go into effect until January 1, 2009, Finance assumed half-year costs of \$650,000 in the 2008-09 academic year, and full year costs of \$1.3 million in 2009-10.

Data on the number of students who are exempt from nonresident tuition under AB 540 is not available for CSU. Finance estimates that this bill would result in costs of \$3.5 million in 2008-09 and \$7 million in 2009-10 for CSU. This estimate is based upon the number of all AB 540 students who attend UC (including documented nonresident students) as a percentage of total undergraduate enrollment, multiplied by the average institutional aid grant of \$2,302 for undergraduate students at CSU. (Nonresident students are not currently eligible for institutional aid at CSU, even if they are documented U.S. citizens.) These costs are likely to be higher, given that both undergraduate and graduate students would qualify for institutional financial aid under this bill.

In 2006-07, according to the Chancellor's Office, the CCCs awarded approximately \$31.3 million in institutional financial aid to currently eligible students (above and beyond the \$248 million allocated for Board of Governors fee waivers). Of this amount, approximately \$20 million was provided from Proposition 98 General Fund monies and the remainder was provided from other institutional sources. While the number of students who are exempt from paying nonresident tuition under AB 540 is not available for the CCCs, this bill would create cost pressure likely in the millions of dollars to provide additional financial assistance (in the form of grants and loans) to such students.

In addition, the bill may require minor, absorbable local costs for community college districts to revise forms if necessary to reflect procedures promulgated by regulations of the Chancellor, pursuant to authority contained in this bill. To the extent that more substantive changes would be necessary, the costs would likely be a reimbursable state mandate. Any regulation development costs by the Chancellor would be minor and absorbable within the annual community college state operations budget.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2007-2008	FC	2008-2009	FC	2009-2010	Code
6440/UC	SO	No		--	C	\$650	C	\$1,300	0001
6610/CSU	SO	No		--	C	\$3,500	C	\$7,000	0001
6870/Comm College	LA	Yes		-----	See Fiscal Summary	-----			0001
6870/Comm College	SO	No		-----	See Fiscal Summary	-----			0001